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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 34th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 13 July 1998, at 3 p.m.

Chairman: Mr. IVAN (Romania) (Vice-Chairman)
later: Mr. P. KIRSCH (Canada) (Chairman)

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In the absence of Mr. P. Kirsch (Canada), Mr. Ivan (Romania), Vice-Chairman, took the Chair.

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.59 and Corr.1)

Statement on behalf of the Secretary-General of the United Nations

1. **Mr. CORELL** (Representative of the Secretary-General) said that the Secretary-General was following the negotiation process very carefully and was confident of a positive outcome to the Conference. However, time was running short. Unless a solution to the major outstanding substantive issues emerged very soon, it would be difficult to assemble and coordinate all the provisions in such a way that the Statute would be ready for adoption later in the week. Many participants had been working extremely hard, in working groups and informal consultations during the Conference. However, some delegations had taken very firm positions. The Conference was engaged in creating an international institution to serve the world at large, and national positions must be harmonized in the interests of common objectives. On behalf of the Secretary-General, he urged those delegations that were still insisting on very firm positions to make every possible effort to work with other delegations to find common ground. The Secretary-General sincerely hoped that the necessary consensus would emerge, and that it would be possible to adopt the Statute of the Court during the Conference.

Part 2 of the draft Statute (*continued*)

Proposal prepared by the Bureau (*continued*)

2. **Mr. SALAND** (Sweden) said that the Bureau paper (A/CONF.183/C.1/L.59 and Corr.1) pointed towards broadly acceptable solutions.

3. He agreed that if generally acceptable provisions on the crime of aggression and treaty crimes were not found, those issues might be deferred to a review conference.

4. He could just accept option 2 in article 5 *quater* on war crimes, but not option 1. Sections C and D must fall within the jurisdiction of the Court. He found it hard to accept the deletion of the weapons clause in section D, since that could allow, for example, the use of chemical weapons in non-international armed conflicts.

5. Turning to article xx, he might possibly accept the "elements of crimes" as guidelines. The enabling resolution annexed to the Final Act should contain some kind of time limit, preferably a specific date, for their elaboration by the Preparatory Commission.

6. He strongly favoured a uniform system of jurisdiction covering all core crimes. He opposed an opt-in possibility for one or more crimes, as he saw no reason to differentiate between genocide, crimes against humanity and war crimes. Concerning preconditions to the exercise of jurisdiction, he had a strong preference for option 1 in article 7, paragraph 2, for all crimes.

7. On the Security Council and article 10, he supported option 1, perhaps with the addition of a clause on measures to preserve evidence.

8. On the Prosecutor, he strongly urged the adoption of article 12 (option 1). The safeguards mentioned in option 2 were adequately covered by article 16. Indeed, article 16 should be streamlined so as to fit with article 17.

9. **Ms. CHATOOR** (Trinidad and Tobago) said that aggression and all the treaty crimes should be included in the Statute. On war crimes (article 5 *quater*), she still preferred option 2 of the *chapeau*. She regretted the non-inclusion of nuclear weapons in section B, paragraph (o), and supported the statement made by the Islamic Republic of Iran on behalf of the Non-Aligned Movement.

10. Problems remained with regard to war crimes committed in non-international armed conflicts. The draft assumed that those crimes would fall within the jurisdiction of the Court, and thus sections C and D were no longer just options. However, the wording of the *chapeaux* was not satisfactory.

11. Article xx, paragraph 2, which provided that the elements of crimes were to be adopted by the Assembly of States Parties, did not in itself create a problem. However, she was troubled by paragraph 4, which could indefinitely delay action by the Court. In her view, the elements of crimes should serve only as guidelines.

12. The division made in article 7 between genocide on the one hand and war crimes and crimes against humanity on the other was confusing. Some further redrafting was desirable. In paragraph 2, she preferred option 1, requiring the consent of any one of four States to jurisdiction.

13. In article 7 *bis*, she preferred automatic jurisdiction in line with option I. With regard to article 10 and the role of the Security Council, she preferred option 1, and could accept a twelve-month period in the interests of consensus. She also supported provisions for preserving evidence. She continued to support the thrust of article 12.

14. **Mr. ROBINSON** (Jamaica) thought that aggression, terrorism and drug trafficking should be listed in article 5. The Preparatory Commission should define them and elaborate their elements. Jurisdiction over the treaty crimes should be under an opt-in regime.

15. In article 5 *ter*, he was concerned about the reference to "civilian populations", which seemed to imply the existence of an armed conflict. Crimes of the kind in question could occur in a context not involving an armed conflict. Nor was he happy with the phrase in the definition in paragraph 2 (a) limiting the concept of an attack directed against a civilian population to acts in furtherance of a State or organizational policy.

16. In order to advance the negotiations, he would support the inclusion of elements of crimes as formulated in article xx, and thought that they should be binding on the Court. A problem would arise, however, if the elements were not adopted before entry into force of the Statute; a State should not be asked to express its consent to be bound by the Statute before the elements of crimes had been elaborated.

17. In article 6, he supported the right of the Security Council, under Chapter VII of the Charter, to refer to the Prosecutor a situation in which a crime appeared to have been committed. On article 7 *bis*, he would have preferred an opt-in procedure for all crimes, but could accept option II, with automatic jurisdiction for genocide and opt-in for the other crimes.

18. It would be useful to include in the Statute a provision similar to the fourth preambular paragraph of the definition of aggression annexed to General Assembly resolution 3314 (XXIX), to the effect that nothing in the Statute should be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations. The Security Council's paramount role under Chapter VII of the Charter and the Court's independence would best be secured by leaving it to the Court to determine its own jurisdiction, adopting option 3 for article 10. Under option 1, the Council could at any stage of its work, under Chapter VII, adopt a resolution requiring the Court to suspend proceedings. Option 2 was worse than option 1, since deferral under option 1 would be for twelve months rather than for an indeterminate period.

19. **Mr. MACKAY** (New Zealand) said that, in article 5 *quater*, option 2 of the *chapeau* offered the best solution. As the Court would only have jurisdiction in those cases where national courts were unable to act, it was unlikely to be dealing with a large number of minor or isolated cases.

20. With regard to section B, he welcomed paragraph (a *ter)*, which would help to resolve a troublesome issue. For clarity and consistency with the text elsewhere, he thought that the words "law of armed conflict" should be replaced by "international humanitarian law".

21. He welcomed the reference in paragraph (o) to "inherently indiscriminate" weapons, although the list of weapons should be expanded. He would support a reference to safe areas, if that commanded general agreement.

22. The fundamental problem raised by article 5 *quater* was the new *chapeau* to section D, which would leave very serious gaps in the Statute. It should either be deleted or tightened up. He also shared the concerns of other delegations about the absence of any reference to weapons in part D.

23. He did not regard article xx as necessary, but would support its inclusion for the sake of consensus. However, he had serious concerns about paragraph 4, because protracted negotiations on the elements of crimes might significantly delay the commencement of the Court's work. The elements should be guidelines rather than binding provisions. Article Y was very useful. He welcomed the reference in article 6 (c) to the role of the Prosecutor. With regard to article 7, he would still prefer universal jurisdiction for genocide, but as there seemed to be a large degree of agreement on the approach taken in option 1 of paragraph 2, he could support that approach for all the core crimes. With regard to article 7 *bis*, he supported automatic jurisdiction over all three core crimes.

24. With regard to article 10, he welcomed the reference to resolutions of the Security Council in both options; that introduced a very positive element of transparency into the process. He preferred option 1.

25. He welcomed article 12, and supported option 1. Any additional safeguards introduced must not weaken the power of the Prosecutor to act *proprio motu*.

26. **Mr. OWADA** (Japan) said that it was of paramount importance that general agreement should be reached on creating an effective international criminal court that would have the blessing of the international community as a whole. To that end, he was willing to be as flexible as possible, within the limits of the basic principles that he regarded as essential.

27. He was definitely in favour of the automatic jurisdiction of the Court in relation to the core crimes. What must be avoided was a system of jurisdiction in which the perpetrator of a core crime escaped prosecution through the loophole of the requirement for ad hoc consent by the State of which the perpetrator was a national. To achieve a satisfactory system, it was necessary to create an objective regime in which international criminal justice could

prevail to punish all genuine criminals, while recognizing that the existing system of international law would still apply for States not party to the Statute. The issue at hand was how to reconcile those two requirements.

28. In conclusion, he suggested that the possibility for fuller utilization of the review process envisaged under article 111 might be usefully explored as a way of dealing with issues unresolved at the present Conference.

29. **Mr. van BOVEN** (Netherlands) said that he was committed to automatic jurisdiction in respect of all three core crimes. Genocide, crimes against humanity and war crimes were all serious crimes. He could not accept an opt-in or opt-out regime as proposed in option II in article 7 *bis*. Likewise, regarding the preconditions for the exercise of jurisdiction, he favoured a uniform regime for all three core crimes. He strongly supported the option requiring one out of the four categories of interested States to have accepted the jurisdiction of the Court.

30. Finally, he favoured the Prosecutor having the power to act *proprio motu*. The safeguards outlined in article 12, especially the role for the Pre-Trial Chamber, were fully adequate. Additional safeguards were not only not needed, but might adversely affect the Prosecutor's independence. On the same issue, while he did not oppose the basic idea behind article 16, it raised many practical issues, including possible lengthy delays. Perhaps article 16 should be revised in the light of the provisions on investigation and prosecution in Part 5 of the Statute and those in Part 9 on international cooperation and judicial assistance.

31. **Mr. YAÑEZ-BARNUEVO** (Spain) said that, with regard to article 5, he well understood why the Bureau considered it preferable at that stage to focus on the core crimes on which, in principle, there was general agreement. Other matters could be included subsequently. A sentence could perhaps be included in the article leaving the way open for subsequent developments.

32. With regard to article 5 *ter*, it would be important, both in that article and in article 5 *quater*, to take account of crimes involving sexual violence. There was no need specifically to cover acts of terrorism.

33. Moving to article 5 *quater*, he noted with appreciation that sections B (a *ter*) and D (b *bis)* now included acts against peacekeeping missions. The present wording was broad enough to cover humanitarian assistance or peacekeeping missions organized in a regional context in accordance with the United Nations Charter.

34. He was concerned that the second sentence of the *chapeau* in section D seemed to restrict the scope of the section excessively. It would be better to speak of conflicts "involving" a State's armed forces and dissident armed forces or other armed groups, so as to cover conflicts between different factions, and the reference to control over a part of a State's territory would excessively restrict the scope of the section.

35. He seriously doubted the need for article xx, especially paragraph 4. Article Y was particularly important to ensure that matters not fully covered by the Statute were understood as remaining within the scope of existing or developing rules of international law. In article 7 *bis*, option I was to be preferred. In article 7, he saw no valid reason for the distinction between genocide and the other core crimes. All three should be subject to the same jurisdictional regime, based on the proposal originally made by the Republic of Korea for alternative jurisdictional links. The complementary acceptance of jurisdiction by States not parties under article 7 *ter* was useful. However, there would need to be safeguards, or States might be tempted to use the advantages of the Court without accepting obligations by ratifying the Statute. The second sentence of article 7 *ter* could be strengthened by requiring the accepting State to cooperate with the Court without any reservation in conformity with the whole Statute, and not just Part 9.

36. In article 10, he favoured a combination of options 1 and 2, but the period of deferral should not exceed twelve months. Article 12 on the role of the Prosecutor should be retained as it stood. However, to address the concerns of some delegations, some differentiation might be made in article 6 between referral of situations to the Court under (a) and (b) and investigations by the Prosecutor under (c).

37. Finally, he had reservations about draft article 16. The existing text would allow a State not party to the Statute to challenge the authority of the Court without having made a declaration under article 7 *ter*. That was quite unacceptable. A non-party must explicitly declare that it accepted the jurisdiction of the Court, at least for the purpose of the case in question; otherwise it would have the advantages without the disadvantages.

38. **Mr. ONKELINX** (Belgium) said that he had always favoured automatic jurisdiction for the Court, as reflected in option I of article 7 *bis*. The opt-in formula could allow States to evade their obligations under the Statute, and seriously undermine the Court's credibility and effectiveness.

39. On the issue of preconditions to the exercise of jurisdiction under article 7, he continued to prefer the principle of universal jurisdiction, but could accept the formula allowing the exercise of the jurisdiction of the Court when one or more of the States concerned had accepted jurisdiction.

40. Under article 12, the power of the Prosecutor to initiate investigations *proprio motu* was essential. The safeguards provided for in article 12 appeared to be sufficient, but he would have no problem with additional safeguards if that would meet the concerns of certain States.

41. **Mr. GADYROV** (Azerbaijan) said that in drafting the Statute a balance had to be struck between the so-called realistic approach and the so-called idealistic approach.

42. He had, in principle, always been in favour of automatic jurisdiction. However, he could accept option II for article 7 *bis* as a compromise. Regarding the preconditions to the exercise of jurisdiction, the approach proposed by the Republic of Korea represented a realistic compromise. Universal jurisdiction was not a realistic approach if the Court's jurisdiction was to be widely recognized.

43. He was disappointed that the crime of aggression and the treaty crimes were not covered in article 5, although he recognized that that reflected current political realities. As a compromise, since there was insufficient time to work out an appropriate definition for such crimes, perhaps they could be added to the list without any definition. There could be a transitional clause stating that, pending a definition thereof, the provisions on crimes of aggression and treaty crimes would not come into force. How they were to be eventually defined—by a preparatory commission or at a review conference—was an issue on which he was quite flexible.

44. On the third issue raised by the Chairman at the previous meeting, concerning suspension of investigation or prosecution by the Security Council, he felt that, since provisions concerning the crime of aggression would not come into force at the same time as the other provisions, option 3 for article 10 could be accepted. Any disputes between the Court and the Security Council could be resolved under existing international law.

45. He was not in favour of the Prosecutor having powers to act *proprio motu*, and favoured deletion of article 12 and of article 6 (c). That would not undermine the independence of the Prosecutor, but would simply underline the principle of complementarity.

46. On the fifth issue, concerning a provision on elements of crimes, a concern was whether such elements should be binding or be guidelines. After careful consideration, and bearing in mind the possible provision for the definition of the crime of aggression and treaty crimes, he saw the merit of including elements of crimes within the Statute. They should have binding force, subject to the provisions of existing international law.

47. **Mr. GÜNEY** (Turkey) supported the view that terrorism and drug trafficking should be under the jurisdiction of the Court. The definition of the elements of crimes could be left to the Preparatory Commission.

48. In the case of war crimes a very high threshold was necessary, because the Court must not concern itself with measures taken to maintain national security. He therefore favoured option 1 for the *chapeau* of article 5 *quater*. In that connection, he preferred the new wording for the *chapeau* of section D but, for the time being, maintained his position that sections C and D should be deleted.

49. Under article xx, elements of crimes should be agreed on before a particular crime came under the jurisdiction of the Court. However, to be constructive, he could support the proposed article provided that the elements of crime to be formulated would serve merely as guidelines.

50. On the preconditions to the exercise of jurisdiction, he would prefer a combination of options 2 and 3 in article 7. Thus exercise of jurisdiction would require the acceptance of jurisdiction with respect to a given crime by the territorial State, the custodial State and the State of which the accused or suspect was a national. With regard to article 7 *bis*, he would have preferred a provision requiring explicit consent of States in respect of all the crimes under the Court's jurisdiction. However, upon reflection and in a spirit of compromise, he could accept option II of article 7 *bis*.

51. On article 8, he wished to point out that the agreement to combine articles 8 and 22 had been based on the understanding that the first sentence would read: "The Court has jurisdiction only in respect of crimes committed after the entry into force of this Statute."

52. He had great difficulties with article 12 on the powers of the Prosecutor to act *proprio motu*. To maintain paragraph 1 as it stood could mean the Prosecutor being overwhelmed by allegations of a political and legal nature, which would not be conducive to his or her effectiveness or credibility. Article 12 should be deleted. He supported article 16.

53. *Mr. P. Kirsch (Canada) took the Chair.*

54. **Mr. RWELAMIRA** (South Africa), speaking on behalf of the member countries of the Southern African Development Community, supported the view that the three core crimes set out in article 5 should be within the jurisdiction of the Court. It would be regrettable for the crime of aggression not to be covered in the Statute. The issue should at least be kept open for consideration by the Preparatory Commission or a review conference at a later stage.

55. He supported automatic and uniform jurisdiction over the crimes of genocide, crimes against humanity and war crimes, and, if possible, aggression. He was concerned about the attempt to create different consent regimes for different crimes, and opposed to the opt-in regime for crimes against humanity and war crimes under option II for article 7 *bis*. Concerning the preconditions for the exercise of jurisdiction, option 1 in paragraph 2 of article 7 was the only acceptable approach. The built-in veto granted to the State of nationality under option 3 had no basis in general international law.

56. He still favoured option 2 for the *chapeau* to article 5 *quater*, concerning war crimes. On weapons, he could accept the present formulation in paragraph (o) subject to the retention of subparagraph (vi), which allowed for the inclusion of other weapons and weapons systems. In that regard, he could not support the proposal that any action under paragraph (o) (vi) should be subject to the normal amendment procedure under article 110, since that would make the process unduly cumbersome.

57. He had similar concerns regarding article xx, in particular paragraphs 3 and 4. Linking the procedure for amending elements of crime in paragraph 3 to that for amending the Statute would make it extremely difficult, by virtue of paragraph 4, for the Court to start its work. He therefore opposed the inclusion of article xx, at least in its present formulation.

58. He supported a strong prosecutor, with the power to act *proprio motu*, as critical to the independence and effectiveness of the Court. Article 12, as presently formulated, contained adequate safeguards. With regard to article 16, he shared the concerns of other delegations about its practical utility.

59. In article 10, he could accept option 1 as contained in article 10, but had serious problems with option 2, which would allow the Security Council to suspend investigations and prosecutions for an unspecified period. Such a provision would neither enhance the work of the Court nor create a harmonious relationship with the Security Council.

60. He was still strongly in favour of the inclusion of both sections C and D. He was concerned, however, that the new *chapeau* in section D not only restricted the scope of application, but also by implication excluded conflicts between organized armed groups.

61. **Mr. MOMTAZ** (Islamic Republic of Iran) said that the crime of aggression should come under the jurisdiction of the Court. The same applied to the use of nuclear weapons. There was no reason to treat different weapons of mass destruction differently. The use of such weapons necessarily violated such principles of international humanitarian law as the obligation to distinguish between civilian and military targets, the principle of proportionality between the means used and the military advantage obtained, and the prohibition of pointless suffering.

62. In article 5 *quater*, he preferred option 1 on the threshold of application. The inclusion of section C was related to the outcome of other pending issues, especially the role of the Security Council and the powers of the Prosecutor.

63. Despite the threshold proposed in its *chapeau*, section B still posed problems because the provisions were taken mainly from Additional Protocol II to the Geneva Conventions, which his country had not yet ratified, rather than reflecting general international law.

64. His position on article xx remained flexible. The idea of formulating elements of crimes for adoption at a later stage was useful.

65. He still had problems with article 6 (c) because to give the Prosecutor the right to initiate an investigation ex officio would be to give the Court supranational jurisdiction.

66. In paragraph 2 of article 7, he favoured option 2. In article 7 *bis*, he favoured option II.

67. With regard to article 10, option 3 would ensure the independence of the Court. In article 12, neither of the two options met his concerns but, in a spirit of compromise, he could accept option 2 providing for additional safeguards to be introduced before the Prosecutor could act.

68. **Mr. PERAZA CHAPEAU** (Cuba) favoured the inclusion of the crime of aggression in the Statute and supported the position of the Non-Aligned Movement concerning its definition. The use of nuclear weapons should be recognized as a war crime in the Statute. He absolutely rejected any subordination of the International Criminal Court to the Security Council, and therefore supported option 3 for article 10.

69. With regard to article 12, the Prosecutor should not be empowered to initiate investigations *proprio motu*.

70. He welcomed the reference in document A/CONF.183/C.1/L.59, under article 5 *ter* on crimes against humanity, to his delegation's proposal for a mention of economic embargoes as acts causing great suffering.

71. **Mr. QUINTANA** (Colombia) expressed support for option I under article 7 *bis*. Secondly, on preconditions for the exercise of jurisdiction, he supported the position that the consent of the territorial State and the custodial State should be required in respect of the three core crimes. Thirdly, on the role of the Prosecutor, he reiterated his support for article 6 (c) and for option 1 under article 12. With regard to the role of the Security Council, he supported option 3 for article 10—i.e. the proposal to have no provision on the matter.

72. **Mr. SADI** (Jordan) would have preferred to maintain the reference to aggression as a crime subject to the jurisdiction of the Court, deferring its definition for a later stage if an acceptable formula could not be found.

73. With regard to paragraph 1 (g) of article 5 *ter*, he understood that the sticking point in the negotiations concerned enforced pregnancy. In his delegation's view, abortion was not the issue; to force a woman to bear the child of a rapist was torture in extreme form, and should be included as a crime against humanity.

74. Following consultations with other delegations, he proposed the following refinement of the definition of enslavement in paragraph 2 (a *ter*): "'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership of a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."

75. In the *chapeau* of article 5 *quater*, he favoured option 2. He welcomed the retention of sections C and D, and, in a spirit of compromise, he could accept the additional language at the end of D. He maintained an open mind on the question of elements of crimes, but would prefer to delete paragraph 4 in article xx.

76. He supported article 6 (c).

77. In article 7, he supported paragraph 1 and option 1 for paragraph 2, but thought that the text should say that the States concerned must either be parties to the Statute or have accepted jurisdiction. In article 7 *bis*, he preferred option I.

78. In article 10, he preferred option 1, although he still failed to understand why the Security Council would need to suspend consideration of a case for such a prolonged period. The Court and the Security Council could enjoy concurrent jurisdiction.

79. He favoured option 1 for article 12.

80. On weapons, he accepted the formulation in the Bureau paper, although he would find it hard to explain to anyone why bullets which expanded or flattened were prohibited while nuclear weapons and laser guns were not.

81. **Mr. PANIN** (Russian Federation) regretted the omission of the crime of aggression, but recognized that it was probably the only way of achieving general agreement on the Statute as a whole.

82. He still preferred option 1 in the *chapeau* of article 5 *quater*. He could not accept the words "inherently indiscriminate" in the *chapeau* to paragraph (o) of section B. Subparagraph (vi) needed further consideration. He still had serious problems with the *chapeau* and the last sentence of section D. In the latter sentence, after the words "shall affect", a reference to State sovereignty should be retained.

83. In article xx, he could support the development of elements of crimes as an integral part of the Statute. As to jurisdiction, he favoured automatic jurisdiction over genocide, and acceptance by States' consent in respect of crimes against humanity and war crimes.

84. Options 1 and 2 in article 7, paragraph 2, could perhaps be combined. On the role of the Security Council, a compromise could be sought on the basis of option 2 of article 10. Concerning article 12, he maintained that the jurisdiction of the Court should be based only on a complaint by a State or a decision by the Security Council. Articles 15, 16, and 18 were acceptable.

85. **Mr. SANGIAMBUT** (Thailand) preferred option 1 in article 5 *quater* relating to war crimes. He still had reservations concerning sections C and D, but proposed, as a compromise, the inclusion of a provision that sections C and D would not apply if there was any foreign interference in the non-international armed conflict. Secondly, in order to balance sections C and D, he would like terrorism to be included. In article 6, exercise of jurisdiction, he accepted (a) and (b), but still had a reservation on (c).

86. In article 7, he supported the preconditions to the exercise of jurisdiction for genocide, and preferred option 1 for paragraph 2. He had reservations on options 2 and 3 because of the mention of the role of the Prosecutor. In article 7 *bis*, he preferred option II.

87. In article 10, he preferred option 2, which would give the Security Council more flexibility, but he could also accept option 1. He still had a reservation about the role of the Prosecutor in article 12.

88. **Mr. VERGNE SABOIA** (Brazil) said that the changes to the provisions of the Statute proposed in document A/CONF.183/C.1/L.59 enabled him to accept automatic jurisdiction for the three core crimes. He therefore favoured option I in article 7 *bis*.

89. With regard to the preconditions for the exercise of jurisdiction, he preferred the formula in option 1 for paragraph 2 in respect of all three core crimes.

90. With regard to the triggering mechanisms, he accepted article 6, including the power of the Prosecutor to act *proprio motu*. He also accepted article 12; any additional safeguards introduced must not unduly affect the independence of the Prosecutor. Some of the provisions of article 16 might meet concerns about possible abuse of power by the Prosecutor.

91. Option 1 in article 10 took care of the need both to preserve the independence of the Court and not to affect the provisions of the Charter on the role of the Security Council. Provision could perhaps be made for the preservation of evidence.

92. The issue of elements of crime should not delay the commencement of the Court's work. Article xx should provide for additional guidelines rather than binding elements. He very much supported the preservation of article Y.

93. He supported the inclusion of the three core crimes. He regretted that aggression could not be included for lack of a definition, but the matter could be dealt with in the context of a further review. With regard to article 5 *quater*, he supported option 2 for the *chapeau*. He welcomed the provision relating to attacks against United Nations personnel in section B, paragraph (a *ter*). With regard to weapons, he looked forward to a compromise that could preserve the idea of incorporating the existing weapons prohibited under international law, while providing for the subsequent addition of further categories of weapons.

94. **Mr. FADL** (Sudan) supported the view that the crime of aggression should be included. Concerning the new *chapeaux* to sections C and D on war crimes, he supported the statement made by the representative of Austria at the previous meeting on behalf of the European Union, and thought that there should be a reference to conflicts among armed groups.

95. In article 6, and again in article 11, a State party referring a case should be an interested party. He supported option 2 in article 7, with the addition of a mention of the State of nationality of the accused. He was flexible on the reference to the custodial State. In article 7 *bis* he supported option I.

96. On article 10, a request by the Security Council for deferral should be renewable only once, if at all, and for a maximum of half of the initial period.

97. **Ms. WYROZUMSKA** (Poland) said that article 7 *ter* raised a problem in that it allowed for *ex post facto* acceptance of the jurisdiction of the Court by a State not a party, in violation of the *nullum crimen sine lege* principle. She could support a provision allowing a non-party to accept the jurisdiction of the Court in advance, in relation to a particular category of crime under the Statute, but she was against allowing a non-party to accept jurisdiction in respect of a crime which had already been committed.

98. She shared some of the concerns expressed by other delegations. She strongly supported the inclusion of the crime of aggression in the Statute, and regretted that a generally acceptable definition had not been found. The interest in its inclusion should be mentioned either in the Final Act or in a resolution attached to it.

99. With regard to article 7 *bis*, the Court should have automatic jurisdiction over all three core crimes. She did not accept the rationale behind the differentiation between the three core crimes in relation to the exercise of jurisdiction. The regime should be uniform. She strongly supported the option originally proposed by the Republic of Korea.

100. The new version of article 10 was an improvement, and she favoured option 1.

101. She doubted the need for article 16.

102. **Mr. SKILLEN** (Australia) supported automatic jurisdiction for the crimes listed in articles 5 *bis*, 5 *ter* and 5 *quater*, as reflected in option I of article 7 *bis*. A coherent jurisdictional regime was essential to the effective operation of the Court.

103. On the preconditions for the exercise of jurisdiction, he supported a jurisdictional regime which made no distinction among the crimes. In regard to the Security Council, he continued to support option 1 under article 10. A period of time during which the Security Council's suspension would remain operative must be specified.

104. Regarding the power of the Prosecutor to act *proprio motu*, he supported option 1 for article 12, which contained adequate safeguards.

105. He could support the formulation of elements of crimes, but that must not in any circumstances delay the entry into force of the Statute. Paragraph 4 of article xx should be deleted, because there was no justification for preventing the Prosecutor from commencing an investigation in the absence of the adoption of the elements.

106. In regard to the threshold provision at the beginning of article 5 *quater*, he thought that the reference in the *chapeau* of article 5 itself to "the most serious crimes" should meet the concerns of delegations, and allow agreement on option 2 for the *chapeau* of article 5 *quater*.

107. He was opposed to the additional language in the *chapeau* of section D of article 5 *quater*. It would not cover conflicts between two or more dissident groups or those in which the dissident group failed to meet the criteria of responsible command or territorial control.

108. He did not understand the deletion of the provision on prohibited weapons in section D. It was illogical to prohibit the use of certain weapons in international armed conflict but remain silent as to their use in internal conflicts. He would favour the reintroduction of what had originally been paragraph (l) of section D.

109. **Mr. GONZALEZ GALVEZ** (Mexico) said that, from the outset, he had urged the inclusion of the crime of aggression. Informal consultations suggested that the issue might be taken up in the form of a draft resolution to be adopted by the Conference, asking the Preparatory Commission to give it priority consideration. He unreservedly supported the inclusion of gender-related and sexual crimes.

110. Another issue that he considered fundamental was preserving the option of making reservations to the Statute.

111. On article 5 *quater*, he was not in favour of including either of the two options for a threshold but would prefer option 2. He was concerned that nuclear weapons were no longer included in section B, paragraph (o), but merely left as a possible option for the future under a regime for amending the Statute.

112. The *chapeau* to section D needed to be simplified. He also had reservations about article xx, since many delegations would delay signing the Statute until the process of adoption of the elements had been completed.

113. In article 6 (b), and in other similar provisions, he suggested using the phrase "relevant principal organs of the United Nations" instead of the reference to the Security Council. In article 7, he was in favour of option 1 for paragraph 2, but there was a problem regarding subparagraph (b), which could be solved by the addition of the words "as long as the detention was in accordance with international law". He accepted automatic jurisdiction regarding the three core crimes. In article 8, the introductory sentence should provide that the Court had jurisdiction only in respect of crimes committed after the entry into force of the Statute. On article 15, he said that "partial" in

paragraph 3 should be replaced by "substantial". Lastly, article 16, paragraph 2, should be redrafted in more positive terms.

114. **Mr. HAFNER** (Austria) said that Iceland, Hungary, Norway, Estonia, Poland, Slovenia, Croatia and the Czech Republic wished to associate themselves with the statement that he had made at the previous meeting on behalf of the European Union.

115. Speaking on behalf of Austria, he shared the concern that the list of crimes in section B of article 5 *quater* had been reduced. In section B, paragraph (a *ter)*, and in section D, paragraph (b *bis*), he assumed that the terms "civilians" and "civilian objects" included personnel engaged in peacekeeping and humanitarian assistance as well as the materials used by them.

116. Concerning article 7 *bis*, he was firmly in favour of automatic jurisdiction, as reflected in option I, and he supported a uniform approach for all crimes as far as the exercise of jurisdiction was concerned. He continued to favour the proposal originally submitted by the Republic of Korea in that regard.

The meeting rose at 6.00 p.m.